(4) 18 pcs. ladies gown;
(5) 6 pcs. ladies long white trousers;
(6) 13 pcs. Fonta Miracle conditioning cream;
(7) 22 boxes x 1 doz. "Flying Wheel" cotton thread;
(8) 11 boxes cold wane wrap paper;
(9) 16 sets Pavos Cassette Tape recorder Model P-16;
(10) 3 ladies wigs;

and it must be remembered that these goods are dutiable.

It falls to be observed that appellant had failed even to declare the radios although the customs officer (PW1) in his evidence stated that appellant told him she had 7 packages of tape-recorders and radios.

Another customs officer (PW3) in the course of examination opened one package and found it to contain radio phono and tape-recorders. He did not examine the other packages. When she was asked what the other packages contained appellant's reply was they contained the same thing i.e. radio phono and tape-recorders.

Yet when appellant declared on form (Ex. P11) the reverse of Exhibit P11 shows plainly that appellant had even in this respect failed to declare:

(1) 19 sets Sunny-Vox Radio x Phonograph Model RP-2000;
(2) 2 sets Sierra radio recorder Model SA 7369;
(3) 4 sets Deluxe Cassette Tape recorder Model P-16.

It is not disputed that the appellant made the declaration in the full knowledge that it was a declaration of dutiable goods and that the declaration was tendered to the customs authority.

Questions of knowledge like intention are purely questions of fact. They are logical conclusions or inferences to be drawn from the primary facts established (*Mahesan* v. *Public Prosecutor*[5]).

Guilty knowledge can reasonably be drawn from the circumstances. If appellant submitted the declaration (Ex. P11) and if the trial magistrate upon the evidence believes the prosecution story that in fact appellant knew what the goods in the packages were and made an incorrect or untrue declaration the court could have inferred guilty knowledge.

Admittedly this is as seems to have been the opinion of the court below a document calculated to mislead and deceive the customs.

It is clear from the decision of the Court of Appeal in the case of *Lim Tong* v. *Public Prosecutor*[6] that the Court of Appeal has power to dismiss an appeal notwithstanding a misdirection in law where no failure of justice has been occasioned by such misdirection. The misdirection as to onus in such circumstances as the present has in fact erred in favour of the accused person and has not in my judgment occasioned a failure of justice.

It was alleged that the learned magistrate failed to consider the defence.

With respect the judgment of the magistrate has at page 19 discussed the defence in considerable detail. I quote from the second paragraph:

"The accused told P.W.3 that she was taking delivery on behalf of someone else. The accused further add *(sic)* that she would supplement her declaration if there were other things in the box only after P.W.3 had refused her to make a new declaration and proceeded with the examination."

and lower down:

"The accused had asserted all along that she did not know the full contents of the packages but she told P.W.2 and P.W.3 that they contained radios and tape-recorders. She need not have to make a declaration at all if she was not sure as to the full contents of the packages.

The accused in her defence gave evidence that she had never declared anything before, but added on previous occasion custom would open her goods and allow her to pay duty there and then.

The court cannot believe the accused was the innocent tool which she claimed to be and she was clearly shown to be dishonest although in my opinion by no means stupid, although it is probable she was not the only person involved in the scheme."

It was established in evidence that the boxes had been with the accused at the time the boat Raja Brooke left Singapore for Kuching.

The magistrate has rejected the story given by the accused.

I have read this record with some care and have listened to counsel, but the magistrate saw the witnesses and heard them give evidence and I can see nothing wrong in the grounds of decision. It appears to me that the accused's defence did not raise a doubt in her mind and, therefore I think the conviction is right.

In the opinion of this court there is no substance in the other grounds and this appeal fails and must be dismissed.

Appeal dismissed.

MAASAH BIN DERAMAN v. PUBLIC PROSECUTOR

[A.Cr.J. (Pawan Ahmad J.) January 12, 1973]
[Malacca — Criminal Appeal No. 26 of 1972]

Road Traffic — Carrying on lorry load in excess of permitted weight — Weigh-bridge — Weight of lorry and load to be certified by officer in charge of weigh-bridge — Certification of examination of weigh-bridge — Road Traffic Ordinance, 1958, ss. 53, 120, 139 and 143.

In this case the appellant appealed against his conviction on a charge of abetting the offence of carrying on a lorry driven by him a load in excess of the permitted weight. It appeared that the lorry was stopped and taken to a police station, where it was handed to a police sergeant, a duly authorised officer under section 53 of the Road Traffic Ordinance. The sergeant took the lorry to the weigh-bridge of the Road Transport Department, Malacca, weighed the lorry and found that weight was in excess. He did the weighing himself and served a copy of the weighing card to the appellant.

Held: (1) while the vehicle in question can be stopped and taken to the weigh-bridge by an officer duly authorised under section 53 of the Road Traffic Ordinance, the duty of the officer does not extend to the weighing of the vehicle;

(2) the weighing of the vehicle must be done by the public servant in charge of the weigh-bridge and not by any other person;

(3) the certificate to be issued under section 143(7) of the Road Traffic Ordinance can only be issued if the weigh-bridge has been examined and found accurate by an inspector

of weights and measures and after the weighing of the vehicle has been done by the public servant in charge of the weigh-bridge himself;

(4) in the circumstances of the case the conviction and sentence must be set aside.

Case referred to:-

(1) *Public Prosecutor* v. *Fong Hong & Anor.* [1972] 2 M.L.J. 108.

CRIMINAL APPEAL.

P. H. D'Cruz for the appellant.

Mohamed Adnan bin Datuk Shuaib (Deputy Public Prosecutor) for the respondent.

Pawan Ahmad J. (delivering oral judgment): The appellant was convicted before the Magistrate's Court, Malacca, on a charge that he, as the driver of motor lorry No. MC.8112 did abet the commission by his employer of an offence of carrying on the said lorry a load in excess of the permitted weight, under sections 120(2) and 139(1) of the Road Traffic Ordinance, 1958. He was convicted and sentenced to a fine of $450, in default 3 months' imprisonment.

The brief facts of the case are that on 25th November, 1971, the lorry was stopped by PW1 (P.C. 554191). He suspected it to be overloaded and instructed the driver to drive it to the Central Police Station where he handed it to the charge of PW3 (Sgt. 4418). The sergeant, who is a duly authorised officer under section 53 of the Road Traffic Ordinance, 1958, took the lorry for weighing at the weigh-bridge of the Road Transport Department, Malacca. The sergeant weighed the lorry and found that the weight in excess above the permitted weight was 4 tons 9 cwts. 3 qrs. The weighing of the lorry was done by the sergeant himself and after the weighing he served a copy of the weighing card to the appellant.

PW4, an enforcement officer attached to the R.I.M.V.'s office, Malacca, stated that the weigh-bridge was maintained by the R.I.M.V. and that the police are supplied the keys of the weigh-bridge. He also stated that prior to 25th November, 1971 the weigh-bridge had been examined and found to be in good working order. In support of this he produced a certificate issued by Messrs. W. & T. Avery Limited dated 1st August, 1971. He also went on to state that he had personally examined the weigh-bridge and found it to be in good working order.

At the trial before the magistrate, counsel for the defendant submitted that the police sergeant (PW3) had no authority to weigh the lorry, that there was no evidence as to who was in charge of the weigh-bridge and that the provisions of section 143(7) had not been complied with.

As I see it, the authority given by the Chief Police Officer to sergeant PW3 under section 53 merely gives him power to stop lorries and to require them to be weighed and directs him what he should do after the weighing of the lorry. It does not authorise him to weigh the lorry himself and neither has the Chief Police Officer the authority to give a police officer the power to weigh a lorry.

There clearly is no evidence as to who is in charge of the weigh-bridge. All that there is is that the weigh-bridge belongs to the R.I.M.V. and is maintained by him. Section 143(7) of the Road Traffic Ordinance reads as follows:

"When in any proceedings it is necessary to prove the weight unladen or laden of any vehicle, or the weight of any load carried on any vehicle, a certificate purporting to be signed by any public servant in charge of the weigh-bridge or weighing machine on which the said vehicle or load was weighed, and certifying —

(a) that such weigh-bridge or weighing machine had been examined within the previous eight months and found to be accurate; and

(b) the weight of such vehicle and load,

shall be accepted by any court as *prima facie* proof of the facts certified in such certificate."

It is clear from section 143(7) mentioned above that it is only "a public servant in charge of a weigh-bridge" who can certify (a) that the weigh-bridge had been examined within the previous 8 months and found to be accurate, and (b) the weight of such vehicle and load. The section provides that his certificate "shall be accepted by the court as *prima facie* proof of the facts certified in such certificate." In my view, it follows from this that it is only the officer in charge of the weigh-bridge and he alone who is authorised and competent to weigh a vehicle. It must be remembered that the weighing of a lorry with so many axles is a very technical matter and therefore calls for competence and experience on the part of the person who does the weighing.

As I have said earlier, the authority of the Police Sergeant extends, in the words of Suffian F.J. in *Public Prosecutor* v. *Fong Hong & Anor.*: [1]

"to stop lorries and to require them to be weighed and what they have to do after weighing."

What the authorised officer does after weighing is, as stipulated under section 53(2), to issue a duplicate or copy of the weight certificate to the person in charge of the motor vehicle.

The magistrate was clearly wrong when he stated in his grounds of decision that the authority given to the sergeant by the Chief Police Officer "authorised the officer not only to take the lorry to the depot but also to weigh it." For reasons already given earlier in the judgment, I rule that the sergeant had no authority to weigh the lorry.

Now, coming to the question of the examination of the weigh-bridge for its accuracy I must pause here to state that a certificate signed by a member of the staff of Messrs. W. & T. Avery Ltd. should not have been admitted in evidence but that, if the prosecution wished to rely on the examination of the weigh-bridge made by Messrs. W. & T. Avery Ltd., they should have called the person who conducted the examination.

In my view, before the officer in charge of the weigh-bridge can certify under section 143(7)(a) as to the examination and the accuracy of the weigh-bridge, he must have before him a certificate by an inspector of weights and measures, duly appointed as such under the law relating to weights and measures in force in the Federation, under section 427(2)(e) of the Criminal Procedure Code (S.S.). Here there was no such certificate and I must, therefore, rule that there was no evidence before the court as to the weigh-bridge having been examined within the previous eight months and as to its accuracy.

For the guidance of magistrates and prosecuting officers, I will set out the procedure that should be adopted in proving a case of this nature before the courts:

(a) The vehicle in question can only be stopped and taken to the weigh-bridge by an officer duly authorised under section 53 of the Road Traffic Ordinance.

(b) The duty of this officer does not extend to the weighing of a vehicle.

(c) The weighing of the vehicle must be done by the public servant in charge of the weigh-bridge and not by any other person.

(d) The certificate to be issued under section 143(7) can only be issued if the weigh-bridge has been examined and found accurate by an Inspector of Weights and Measures and after the weighing of the vehicle has been done by the public servant in charge of the weigh-bridge himself.

The law relating to the weighing of motor vehicles is a strict law and must be strictly complied with. No amount of argument that it would cause inconvenience to the public servant in charge of the weigh-bridge, who may have to come to weigh the vehicles at odd hours of the day and night, can prevail against this. Neither is it proper for the key of the weigh-bridge to be kept by someone other than the public servant in charge of the weigh-bridge.

For the aforesaid reasons the appeal is allowed, the conviction and sentence set aside and the fine of $450 will be refunded to the appellant.

Appeal allowed.

Solicitors: *Tay Leong Siak & Co.*

MUTHIAH v. NATESAN

[A.C.J. (Pawan Ahmad J.) June 13, 1973]
[Malacca — Civil Appeal No. 2 of 1973]

Limitation — Action on contract — Action not to be brought after expiration of six years from accrual of cause of action — Summons, statement of claim and all requisite fees paid for — Registrar signing summons after expiry of 6 years — When action is brought — Limitation Ordinance, 1953, s. 6.

In this case the appellant appealed against the judgment of the Sessions Court which had dismissed his claim on the ground that it was barred by limitation. The cause of action in this case accrued on June 17, 1963. The summons and statement of claim were presented at the Sessions Court on June 16, 1969. The payment of fees and all other formalities were duly complied with by the appellant on the same date, but the summons was signed by the Registrar of the Sessions Court only on June 17, 1969.

Held: in this case the appellant brought the action on the June 16, 1969 when he filed in the appropriate court the summons and statement of claim on the appropriate form and paid the requisite fee, and therefore his claim was not statute barred.

Cases referred to:-

(1) *Public Prosecutor* v. *Winston Chung Yin Chen* [1969] 1 M.L.J. 207, 208.

(2) *Boota Singh* v. *Isman bin Haji Ali* [1957] M.L.J. 127.

MAGISTRATE'S APPEAL.

P. Devadas for the appellant.

Thara Singh Sidhu for the respondent.

Pawan Ahmad J. (delivering oral judgment): This is an appeal by the appellant, who is the plaintiff in Malacca Sessions Court Civil Action No. 69 of 1969, from the decision of the Sessions Court which ruled that the action brought about by the plaintiff against the defendant for the recovery of the sum of $2,000 is barred by the statute of limitation.

Paragraph 4 of the statement of defence reads as follows:

"The defendant further says that in any event the plaintiff's cause of action did not accrue within 6 years before the commencement of this action and the defendant will rely upon the provisions of the Limitation Ordinance No. 4 of 1953."

Section 6 of the Limitation Ordinance provides that an action founded on a contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.

Paragraph 3 of the statement of claim states that the cause of action accrued on 17th June, 1963. The summons and statement of claim was presented at the Sessions Court on 16th June, 1969. The payment of fees and all other formalities were duly complied with by the plaintiff on the same date, but the summons was signed by the Registrar of the Sessions Court only on 17th June, 1969.

Counsel for the defendant, in his submission before the Sessions Court, cited the case of *Public Prosecutor* v. *Winston Chung Yin Chen*[1] where Ibrahim Manan J. said:

"In my opinion, a writ of summons is not sued out or instituted in the High Court until all the requisite steps have been taken for its issuance out of the registry."

In that case what the court had to decide was the question as to the date when a writ of summons is sued out or instituted and not the question of limitation. In my view, that case therefore is of no assistance in deciding the question of limitation.

Counsel for the defendant also invited the court's attention to O. 6 r. 3 of the Subordinate Courts Rules, 1950, which reads as follows:

"The registrar shall examine the summons and, if it appears to be in proper form, and if the plaintiff shall have paid the appropriate fees (including the fees for service thereof), shall assign a serial number thereto, seal, sign and issue it, and deliver it to the bailiff for service. If the registrar is of opinion that the summons is not in proper form, he may reject it or direct that it be amended."

In my view, this rule again has no relevance on the question of limitation but merely sets out the procedure for the issue and service of the summons.

Counsel for the plaintiff in the court below conceded that the summons was sealed and signed on 17th June, 1969 and that the last day for the filing of the summons was 16th June, 1969. He maintained that so long as he has filed the summons on 16th June, 1969, the action had been brought within the period stipulated under section 6(1) of the Limitation Ordinance, 1953. In support of his contention, he invited the court's reference to the Law of Limitation by *Rustomji*. For the purpose of this appeal, the court will make reference to the 5th Edition of *Rustomji*. On pages 55-56 of this Edition it is stated:

"In the case of a plaint the period of limitation ceased to run on the day on which the plaint is actually filed in court; it is immaterial when the summons is served on the defendant. Limitation is checked from the day the plaint, appeal,